REMARKS

Favorable reconsideration and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks.

Claims 10-11, 21-22 and 34-35 are amended herein, and no claims are added or canceled by this Amendment. As a result, claims 1-35 remain pending in the application. In the Office Action of February 17, 2005, claims 10, 14, 22-23, 25 and 34 are rejected under 35 U.S.C. §112, second paragraph; claims 1-8, 13-19 and 26-31 are rejected under §102(e) in view of U.S. Patent 6,498,955 (McCarthy); claims 9, 11, 20, 24, 32-33 and 35 are rejected under §103(a) in view of McCarthy and further in view of U.S. Patent 6,084,516 (Yasushi); claims 10, 21-23 and 34 are rejected under §103(a) in view of McCarthy and further in view of the paper entitled "Migratory Applications" by Krishna A. Bharat (Bharat); and claim 25 is rejected under §103(a) in view of McCarthy and further in view of Bharat and yet further in view of Yasushi. These rejections are traversed for at least the following reasons.

§112, Second Paragraph rejections

The Office Action rejects claims 10, 14, 22-23, 25 and 34 under 35 U.S.C. §112, second paragraph.

In paragraph 3 the Office Action rejects claims 10, 22 and 34, objecting to the term "the initial location." The claims have been amended to address this objection. Accordingly, withdrawal of the rejection is respectfully requested.

In paragraphs 4, 6 and 7 the Office Action rejects claims 10, 22, and 23, respectively, questioning the use of the terms "accessible" and "not accessible." It is believed that the meaning of this claim is sufficiently clear and is consistent with the specification, for example, as

per the disclosure provided in paragraph 31 of the specification. It is clear that content being outputted in a room is "accessible" and content that is not being outputted in the room is "not accessible." However, in an effort to be responsive to the Office Action claim 10 has been amended to recite "outputted" and "not outputted" in lieu of "accessible" and "not accessible," and claim 22 has been amended to recite "for the first user" in lieu of "at the initial location." Claims 11, 21 and 34-35 have also been amended since these claims too use the terms "accessible" and "not accessible." It is respectfully submitted that, since no rejection was made with respect to the use of "accessible" and "not accessible" in claims 11, 21 and 34-35, the aforementioned amendments do not affect the patentability of the claims for the purposes of determining equivalents under Festo. If the Office disagrees with this position, it is respectfully requested that the Office's position be set forth in the next official paper to afford applicant an opportunity to traverse the position. Accordingly, withdrawal of the rejection is respectfully requested.

Paragraph 5 of the Office Action includes a rejection of claim 14, in particular objecting to the term "preponderance" in the claim. The Office Action suggests replacing "preponderance" with "majority" in the claims. The word "preponderance" is listed as a synonym of the word preponderant which has a definition of "greater in amount, weight, power, influence, importance, etc."[1] The word "majority" has a definition of "the greater part or larger number; more than half of the total."[2] It felt that the definition of "preponderance" encompasses that of "majority" and also more clearly defines the scope of other embodiments of the invention as well. For example, the specification at paragraph 26 discusses that "priority may be given to users, such as by

[1] Webster's New World Dictionary (1980) ;Williams-Collins Publishers, Inc.; p. 1123.
[2] Id. at 854.

weighting characteristics." The specification, at paragraph 28, also mentions that content may be outputted to a particular device based on the proximity and orientation of the users with respect to the device—or in other words, the influence or importance (from the meaning of "preponderance") of the users relative to the output may be used in controlling the output. Therefore, it is respectfully submitted that "preponderance," a term that encompasses the definition of "majority," is more appropriate in the claims than the word "majority" suggested in the Office Action. Accordingly, withdrawal of the rejection is respectfully requested.

In paragraphs 8 and 9 the Office Action rejects claim 25, objecting to the terms "the location" and "at least one other device." Claim 25 has been amended to address the objections. Accordingly, withdrawal of the rejection is respectfully requested.

§102 Rejection in view of McCarthy

In paragraphs 11-23 the Office Action rejects claims 1-8, 13-19 and 26-31 under 35 U.S.C. §102(e) in view of McCarthy. The McCarthy patent is drawn to member preference control of an environment, for example, for music preferences in a fitness center. In accordance with the McCarthy patent, the members of the fitness center each specify their preference rating for different genres of music in terms of a rating from +2 to -2. The system described in McCarthy keeps track of the members who are working out at the fitness center at any given time, and uses a group preference arbitration algorithm to compute the overall group preference for a particular category.[3] McCarthy's preference arbitration algorithm involves shifting the assigned rating terms from the +2 to -2 scale to a scale of non-negative numbers, then squaring the result in order to widen the gap between the more popular categories and the less popular

categories.[4] McCarthy uses these calculations to rate the different categories of music. Then, instead of determining a content characteristic common to the various users, McCarthy uses the calculated values to assign weights to the different music categories for use in a random selection scheme. The McCarthy patent explains that its "system uses a *weighted random selection policy* for selecting one of the top m stations (called the candidate set), where m is a parameter whose value is set by the group environment staff."[5] In view of the McCarthy system's use of its preference arbitration algorithm and McCarthy's weighted random selection policy, it is respectfully submitted that McCarthy does not disclose "determining at least one content characteristic common to at least the first user and the second user based on the first user profile and the second user profile," as recited in claim 1, and McCarthy does not disclose "determining at least one content characteristic common to the identified user profiles," as recited in claim 13 or the similar feature of claim 26. Claims 2-8, 14-19 and 27-31 are believed to be allowable by virtue of their dependency to claims 1, 13 and 26.

Accordingly, it is respectfully submitted that the McCarthy patent does not disclose the features of the claimed invention. Therefore, withdrawal of the §102 rejection in view of McCarthy is requested.

§103 Rejections

In paragraphs 25-27 the Office Action rejects claims 9, 11, 20, 24, 32, 33 and 35 under 35 U.S.C. §103(a) in view of McCarthy and further in view of Yasushi. This rejection is respectfully traversed.

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[3] McCarthy, col. 22, line 61 to col. 23, line 40.
[4] McCarthy, col. 23, lines 40-51.

In paragraphs 26 and 28 the Office Action rejects claims 9, 20, 32 and 33, respectively, noting that the McCarthy patent does not disclose establishing an orientation of the first user and the second user with regards to a first device. The Office Action contends that the Yasushi patent teaches the features missing from the McCarthy patent. This contention is respectfully traversed. The system described in the Yasushi patent may be used to detect the *position* of a person in a room, but Yasushi does not teach or suggest to detect the person's *orientation.* A user's orientation affects their ability to experience some forms of content, for example, television viewing or possibly listening to stereophonic music.[6] A person positioned close to a television set would not be able to enjoy the show if they are oriented in a direction away from the screen.

Accordingly, it is respectfully submitted that the McCarthy patent and the Yasushi patent, either taken singly or as a hypothetical combination, do not disclose or suggest the features of the claimed invention. Therefore, withdrawal of the §103 rejection in view of McCarthy and Yasushi is requested.

In paragraphs 27 and 29 the Office Action rejects claims 11, 20, 32 and 33 noting that the McCarthy patent does not disclose the features of these dependent claims. It is believed that neither McCarthy nor Yasushi disclose or suggest the features of the rejected claims. However, it is noted that dependent claims 11, 24, 32 and 33 have each been amended to even more clearly define the scope of the invention, thus obviating the §103 rejection of these claims. Therefore, withdrawal of the §103 rejection in view of McCarthy and Yasushi is requested.

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[5] McCarthy, col. 23, lines 49-52 (emphasis added).
[6] See, for example, the specification at paragraph 28 discussing the detection or orientation and/or position.

In paragraphs 31-32 claims 10, 21-23 and 34 are rejected under 35 U.S.C. §103(a) in view of McCarthy and further in view of Bharat. It is believed that neither McCarthy nor Bharat disclose or suggest the features of the rejected claims. However, it is noted that dependent claims 10, 21-22 and 34 have each been amended to even more clearly define the scope of the invention, thus obviating the §103 rejection of these claims. Therefore, withdrawal of the §103 rejection in view of McCarthy and Bharat is requested.

In paragraph 34 claims 12 is rejected under 35 U.S.C. §103(a) in view of McCarthy and further in view of Sainton, the Office Action noting that the McCarthy patent does not disclose or suggest the features of dependent claim 12. The Office contends that the Sainton patent overcomes the deficiency of McCarthy. This contention is respectfully traversed. The Sainton patent involves an adaptive omni-modal radio system in which a carrier may be selected for wireless communications by assigning weights to a number of different competitive factors or criteria. The Sainton patent states:

> The criteria for a particular user are stored in a user profile in the memory of circuit 1. Preferably, a default user profile corresponding to the preferences of a large number of users is established. Then, the individual user can change his or her user profile to establish different selection parameters and preferences at any time through appropriate input to circuit 1.[7]

In Sainton's system the criteria for a particular user are stored in a user profile. Hence, Sainton does not teach "the third user not having a user profile," as recited in claim 12. Moreover, Sainton creates a default user profile corresponding to the preferences of a large number of users – without mentioning whether the users are present

or are past users which were encountered. Since apparently one default user profile is created in the Sainton system for all users, it seems unlikely that any particular user would have encountered the "large number of users" mentioned by Sainton. Thus, neither of the patents relied upon for the rejection discloses a "third user not having a user profile," and "wherein the user profile is generated by at least one of general demographic information of users present and based on past users encountered," as recited in claim 12.

In paragraphs 35-36 the Office Action rejects claim 25 under 35 U.S.C. §103(a) in view of McCarthy and further in view of Bharat and yet further in view of Yasushi. While it is believed that patents cited in the rejection do not disclose or suggest the features of the rejected claims, it is noted that dependent claim 25 is amended herein to even more clearly define the scope of the invention, thus obviating the §103 rejection of this claim. Therefore, withdrawal of the §103 rejection in view of McCarthy and Bharat and Yasushi is requested.

[7] Sainton, col. 17, lines 49-57.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. However, should there remain any unresolved issues, the Examiner is kindly invited to contact applicant's representative, Scott Richardson, at telephone number 1.703.739.0573 so that such issues may be resolved as expeditiously as possible.

Respectfully submitted,

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